

REMARKS

Applicants amended claims 103, 105-106, 117, 120, and 131-132; and cancelled claims 104, 116, 119, 121-126, 129-130, 133, and 137-138. Support for the amendments can be found, for example, in the claims as originally filed, the abstract, and at page 39, lines 18-19 of the patent application. Claims 103, 105-112, 115, 117-118, 120, 127-128, 131-132, and 135 are presented for examination.

The Examiner rejected claims 103-112, 115-133, 135, and 137-138 under 35 U.S.C. § 112, first paragraph, for failing to comply with the enablement requirement. Applicants cancelled claims 104, 116, 119, 121-126, 129-130, 133, and 137-138, so the rejection of these claims should be withdrawn. In addition, Applicants deleted the term “prophylactically” from claim 103, so claims 103, 105-112, 115, 117-118, 120, 127-128, 131-132, and 135. Accordingly, Applicants request reconsideration and withdrawal of this rejection.

The Examiner rejected claims 103-112, 115-133, 135, and 137-138 under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement. Applicants canceled claims 104, 116, 119, 121-126, 129-130, 133, and 137-138, so the rejection of these claims should be withdrawn. Applicants submit that numerous examples of methods of treating ventilator-associated respiratory conditions using nanocrystalline-silver containing material are described, for example, from page 52, line 6 to page 55, line 29 of the application. Further, as amended, the claims no longer include the term “prophylactically.” Thus, as Applicants disclosed in detail the manner by which treatment of microbial respiratory conditions can occur and provided ample guidance on methods of treating a microbial condition, Applicants had possession of the claimed invention at the time the application was filed. Therefore, Applicants request that the rejection of claims 103, 105-112, 115-132, 135, and 137-138 under 35 U.S.C. § 112, first paragraph, be withdrawn.

The Examiner rejected claims 103-104, 106-107, 109, 111, 115-116, 119-121, 124, 127, 129-131, 133, and 137-138 under 35 U.S.C. § 102(b) as anticipated by WO 99/60999 (“Fleischer”). Applicants cancelled claim 104, 116, 119, 121, 124, 129-130, 133, and 137-138, so the rejection of these claims should be withdrawn. As amended, the claims cover methods of

treating a condition, including dissolving a nanocrystalline metal-containing material in a solvent to form a solution, recognizing a possibility for occurrence of the condition at a second area of a subject; after recognizing the possibility for occurrence of the condition at a second area of the subject, selecting a first area of the subject for contact with the nanocrystalline metal-containing material to reduce the occurrence of the condition at the second area of the subject; and contacting the first area of a subject with the solution to reduce the occurrence of the condition at the second area of the subject. The first area is different from the second area; the condition is a microbial respiratory condition; and the nanocrystalline metal-containing material includes silver. Fleischer does not disclose the subject matter covered by the claims. Accordingly, Applicants request that this rejection be reconsidered and withdrawn.

The Examiner rejected claims 103-104, 106-112, 116-129, 131, 133, and/or 138 under 35 U.S.C. §§ 102(b) or 102(e) as anticipated by Derwent abstract 1194-089981 ("the Derwent abstract"), U.S. 6,899,933 ("Quillin"), U.S. 6,454,754 ("Frank"), or U.S. 7,087,249 ("Burrell"). Applicants cancelled claims 104, 116, 119, 121-126, 129, 133, and 138, so the rejection of these claims should be withdrawn. Claims 103, 106-112, 117-118, 120, 127-128, and 131 are as discussed above. Contrary to the Examiner's assertion, none of the Derwent abstract, Quillin, Frank, or Burrell disclose dissolving a nanocrystalline metal-containing material in a solvent to form a solution, recognizing a possibility for occurrence of the condition at a second area of a subject; after recognizing the possibility for occurrence of the condition at a second area of the subject, selecting a first area of the subject for contact with the nanocrystalline metal-containing material to reduce the occurrence of the condition at the second area of the subject; and contacting the first area of a subject with the solution to reduce the occurrence of the condition at the second area of the subject. Therefore, Applicants request that these rejections be reconsidered and withdrawn.

Applicants believe the claims are in condition for allowance, which action is requested.

Please apply any other charges to deposit account 06-1050.

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Respectfully submitted,

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